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Right of peoples to self-determination

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Report of the Secretary-General

Summary

In its resolution 59/180, the General Assembly requested the Commission on Human Rights to continue to give special attention to the violation of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation, and requested the Secretary-General to report on this question to the Assembly at its sixtieth session. The present report, which has been prepared pursuant to that request, takes a thematic approach and summarizes the developments at the sixty-first session of the Commission as well as the relevant principles from the jurisprudence of the Human Rights Committee.

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I. Introduction

1. In its resolution 59/180, the General Assembly requested the Commission on Human Rights to continue to give special attention to the violation of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation, and requested the Secretary-General to report on this question to the Assembly at its sixtieth session.

2. The principle of self-determination is enshrined in Article 1, paragraph 2, of the Charter of the United Nations. Article 1 common to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights affirms the right of all peoples to self-determination, and lays upon States parties, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, the obligation to promote the realization of that right and respect it, in conformity with the provisions of the Charter.

3. This report is prepared pursuant to resolution 59/180. It contains a summary of the developments at the sixty-first session of the Commission on Human Rights as well as the relevant principles from the jurisprudence of the Human Rights Committee, the expert body that monitors implementation of the International Covenant on Civil and Political Rights by the States parties.

II. Sixty-first session of the Commission on Human Rights

4. At its sixty-first session, under agenda item 5, the Commission on Human Rights discussed "The right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation". The Commission decided to defer consideration of the "Question of Western Sahara" to its sixty-second session. The following two resolutions were adopted under item 5: resolution 2005/1, entitled "Situation in occupied Palestine", and resolution 2005/2, entitled "The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination".

III. Concluding observations of the Human Rights Committee

5. The Human Rights Committee has been addressing the right to self-determination when considering the periodic reports of States parties. Most recently, the Committee addressed some issues related to the right to self-determination in its concluding observations on Mauritius and on Morocco.

6. In its concluding observations on Mauritius, the Committee took note "of the continuing dispute between the State party and the United Kingdom Government with respect to the legal status of the Chagos Archipelago, whose population was removed to the main island of Mauritius and other places after 1965 (Covenant, art. 1)" and recommended that the "State party should make every effort to enable the population concerned who were removed from these territories to fully enjoy their rights under the Covenant" (CCPR/CO/83/MUS, para. 5).

7. In its concluding observations on Morocco, the Committee stated that it "remains concerned about the lack of progress on the question of the realization of the right to self-determination for the people of Western Sahara (Covenant, art. 1)"

and recommended that the "State party should make every effort to permit the population groups concerned to enjoy fully the rights recognized by the Covenant" (CCPR/CO/82/MAR, para. 8).

IV. Jurisprudence of the Human Rights Committee

8. General comment No. 23 (1994) on article 27 of the International Covenant on Civil and Political Rights "draws a distinction between the right to self-determination and the rights protected under article 27 [of the Covenant]. The former is expressed to be a right belonging to peoples and is dealt with in a separate part (Part I) of the Covenant. Self-determination is not a right cognizable under the Optional Protocol. Article 27, on the other hand, relates to rights conferred on individuals as such and is included, like the articles relating to other personal rights conferred on individuals, in Part III of the Covenant and is cognizable under the Optional Protocol" (para. 3.1). Accordingly, the Committee has repeatedly declared itself incompetent to consider individual complaints alleging a violation of the right to self-determination.

9. In *J.G.A. Diergaardt v. Namibia*, the Committee acknowledged that the right to self-determination under article 1 affects the interpretation of other rights protected by the Covenant. The Committee noted that

> "the authors [of the complaint had] alleged that the termination of their self-government violates article 1 of the Covenant. The Committee recalls that while all peoples have the right of self determination and the right freely to determine their political status, pursue their economic, social and cultural development and dispose of their natural wealth and resources, as stipulated in article 1 of the Covenant, the question whether the community to which the authors belong is a 'people' is not an issue for the Committee to address under the Optional Protocol to the Covenant. The Optional Protocol provides a procedure under which individuals can claim that their individual rights have been violated. These rights are set out in Part III of the Covenant, articles 6 to 27, inclusive [citation omitted]. As shown by the Committee's jurisprudence, there is no objection to a group of individuals, who claim to be commonly affected, to submit a communication about alleged breaches of these rights. Furthermore, the provisions of article 1 may be relevant in the interpretation of other rights protected by the Covenant, in particular articles 25, 26 and 27" (CCPR/C/69/D/760/1997, para. 10.3).

10. In *Mahuika et al. v. New Zealand*, the Committee observed that

> "the Optional Protocol provides a procedure under which individuals can claim that their individual rights have been violated. These rights are set out in Part III of the Covenant, articles 6 to 27, inclusive. [citation omitted.] As shown by the Committee's jurisprudence, there is no objection to a group of individuals, who claim to be commonly affected, to submit a communication about alleged breaches of these rights. Furthermore, the provisions of article 1 may be relevant in the interpretation of other rights protected by the Covenant, in particular article 27" (CCPR/C/70/D/547/1993, para. 9.2).

11. In *Gillot v. France*, the Committee interpreted article 25 in the light of article 1 of the Covenant, observing that

> "[a]lthough the Committee does not have the competence under the Optional Protocol to consider a communication alleging violation of the right to self-determination protected in article 1 of the Covenant, it may interpret article 1, when this is relevant, in determining whether rights protected in Parts II and III of the Covenant have been violated. The Committee is of the view, therefore, that, in this case, it may take article 1 into account in interpretation of article 25 of the Covenant" (CCPR/C/75/D/932/2000, para. 13.4).

12. While the Committee continues to maintain that it does not have the competence under the Optional Protocol to consider communications alleging a freestanding violation of the right to self-determination protected in article 1 (see *Hom v. The Philippines* (CCPR/C/78/D/1169/2003, para. 4.2) and *Wilson v. Australia* (CCPR/C/80/D/1239/2004, para. 4.3)), it does take the essence of article 1 into account when interpreting articles 25, 26 and 27 of the Covenant.